

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 02-0389

**Income Tax
Calendar Year 2001**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. **Tax Administration** – Bad Check Penalty

Authority: IC 6-8.1-10-5

The taxpayer protests the bad check penalty.

STATEMENT OF FACTS

The bad check penalty was assessed on a returned check resulting from an income tax return filed for the calendar year 2001.

The taxpayer is an individual.

I. **Tax Administration** – Bad Check Penalty

DISCUSSION

The taxpayer requests waiver or reduction of the 100% bad check penalty as the error was unintentional.

The taxpayer was victimized by embezzlement. During the investigation of the embezzlement, the taxpayer closed the existing checking account and opened a new checking account to prevent the cashing of any more fraudulent checks. Before closing the checking account, the taxpayer issued a check to the Department for the payment of 2001 income taxes in the amount of \$246. As the checking account was closed before the Department could present the check for payment to the bank, the check "bounced". The Department sent notices of liability to the taxpayer concerning the returned check on June 18, 2002 and July 10, 2002. The taxpayer did not respond to the notices until July 19, 2002 as the taxpayer was out-of-town and unable to access their mail.

01-20020389.LOF

The statute for bad checks, IC 6-8.1-10-5(c) reads: “If the person subject to the penalty under this section can show that there is reasonable cause for the check not being honored, the department may waive the penalty imposed under this section.”

Reasonable cause is defined in 45 IAC 15-11-2(b) as: “Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

The Department finds the taxpayer was inattentive to tax duties as the taxpayer did not respond to Department notices until mid-July. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied.